

indicates that a LATA may not be modified for a limited purpose.”^{16/} Indeed, in that case the Commission went on to hold that Section 153(25)(B) empowered it to waive a LATA restriction with respect to a data service (specifically, ISDN) in order to permit a BOC to offer that service across an existing boundary, while leaving that boundary intact for general purposes. The Commission explained that, in deciding whether to exercise such authority, it would weigh the public’s interest in the modification against the potential for anticompetitive effects. Because the modification in question would enable SBC to bring data services to customers who would otherwise be uneconomic to serve, and because the risk of anticompetitive effects were minimal, the Commission approved the modification.^{17/}

Making a similar modification for U S WEST’s advanced data service would serve the public interest by promoting the deployment of advanced telecommunications infrastructure. In particular, it would enable U S WEST to bring advanced data services to rural customers who would otherwise continue to go unserved. And because such a modification would have no effect on CLECs’ opportunity to offer data services by combining unbundled loops purchased from U S WEST with equipment available in the competitive marketplace, the modification would pose no threat to competition. The appropriateness of taking such action is further buttressed by Section 706 of the 1996 Act, which explicitly directs the Commission to

^{16/} Southwestern Bell Telephone Company Petition for Limited Modification of LATA Boundaries to Provide Integrated Services Digital Network (ISDN) at Hearne, Texas, Mem. Op. and Order, File No. NSD-LM-97-26 (rel. May 18, 1998) ¶11.

^{17/} Id. ¶¶ 11-13.

make full use of its regulatory authority to encourage the deployment of advanced telecommunications infrastructure.

Such a limited waiver for the sole purpose of building cell- and packet-switched networks would not undermine the goals or general effectiveness of Section 271. Nor would it go beyond permissible "modification" by abolishing or eliminating the LATA boundary system, as some IXC's have suggested. The Commission has recognized that the waiver of a LATA boundary for a single type of service falls far short of erasing that boundary.^{18/} Voice services would remain fully subject to Section 271's interLATA restrictions and authorization process. Indeed, as noted above, U S WEST has made a firm commitment not to market any packetized voice services until it receives Section 271 authorization. Thus, the Section 271 process for long-distance voice service would remain intact.

D. Even if Sections 251(c) and 271 Otherwise Would Apply to Advanced Data Services, Section 706 Permits the Commission To Forbear In Order To Promote the Deployment of Advanced Data Capability.

In any event, even if the Act otherwise required the application of Sections 251(c) and 271 to advanced data services, Section 706 would authorize the Commission to forbear from such an application. U S WEST discussed the scope of Section 706 forbearance authority at length in its reply comments concerning its petition for relief, and will not repeat the full argument here. See Reply Comments of U S WEST Communications, Inc., CC Dkt. 98-26 (May 6, 1998) at 6-18 ("U S WEST Reply"). As U S WEST set forth there, the language of Section 706 is broad and mandatory: It directs the Commission to lift all regulatory barriers that are

^{18/}

Id.

hindering the widespread deployment of advanced telecommunications services. Nothing in Section 706 limits the types of barriers that the Commission is required to remove or the specific regulatory requirements from which the Commission may forbear, so long as the Commission's action is consistent with the public interest.

ALTS asserts that Section 706 is not an independent grant of forbearance authority at all, but rather a cross-reference to Section 10 of the Act. ALTS Pet. 33-34. ALTS made the same argument in its comments on U S WEST's petition, and U S WEST refuted that contention in substantial detail in its reply. See U S WEST Reply 8-14. To summarize, Section 706 contains no express cross-reference to Section 10, and the term "regulatory forbearance" has long had a general meaning apart from that section. In addition, the legislative history makes clear that Congress intended Section 706 to be a robust, independent tool for ensuring that smaller and rural communities receive the benefits of advanced telecommunications. Section 10, on the other hand, focuses on a very different question — whether competition has made regulation unnecessary — and does not permit the Commission even to consider infrastructure deployment issues as part of this inquiry. Reading Section 706 as a mere cross-reference to Section 10 therefore would eliminate Section 706 forbearance as a tool for promoting the deployment of advanced infrastructure, in frustration of Congress's intention.

Moreover, there is no merit to ALTS's suggestion that the Commission's forbearance authority is somehow limited by Section 271(d)(4), which provides that the Commission may not "limit or extend the terms used in the competitive checklist" set forth in Section 271(c)(2)(B). See ALTS Pet. 34-35. Forbearance under Section 706 would not limit or extend the competitive checklist; rather, it would create a narrow exception to the applicability of

the checklist. The checklist itself would remain untouched by a Commission decision to refrain from applying it to advanced data services.

E. ALTS's Overbroad Request for Relief Is Contrary to the Policy of the Act As Well, Because It Would Discourage Incumbent Carriers from Deploying New Services and Investing in Needed Infrastructure.

The relief that ALTS seeks — cost-based access to every current and future facility in the incumbent LECs' cell- and packet-switched data networks and discounted resale of the services offered over those networks — would blunt the incentives for incumbent LECs to invest in the deployment of advanced data transmission capability and would virtually guarantee that Americans in rural areas will continue to be left behind. Moreover, such relief is entirely unnecessary because CLECs do not need such a broad entitlement in order to provide competitive data services. Thus, ALTS's proposed relief is inconsistent with the policy aims of the Act.

Requiring incumbent LECs to make all advanced data equipment and networks available to competitors on regulated terms would drastically reduce an incumbent LEC's incentive to innovate and invest in infrastructure. In a competitive marketplace, competitors invest in new facilities (and in research to develop such new facilities) in order to differentiate themselves from each other. Successful differentiation enables a competitor to make its products particularly attractive to consumers and, ultimately, to increase earnings. But if an incumbent LEC were required to turn over immediately every new facility to its competitors at regulated prices, there would be no way for it to use its investments in new and innovative facilities to differentiate its services. Moreover, while the incumbent LEC would be required to share the

benefits resulting from any successful investment, the incumbent LEC alone would bear the cost of any unsuccessful investment. Accordingly, the incumbent LEC would not risk experimenting with any innovative or new technology. Incumbent LEC investment in advanced and innovative facilities would grind to a halt.^{19/}

Discouraging incumbent LECs from investing in new infrastructure is antithetical to the public interest and to the Act's goal, expressly set forth in Section 706, of "encouraging the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Indeed, Chairman Kennard has acknowledged the importance of ensuring that "regulation does not prevent the deployment of facilities that otherwise would be built" and has explicitly noted that "incumbent telephone companies [should] play a major role in the deployment" of advanced data services to residential customers.^{20/} Moreover, any reduction in incumbent LEC infrastructure investment would be felt most sharply in rural areas that are already underserved. As detailed above, U S WEST is the only carrier seriously contemplating supplying advanced data services to rural areas within its region.

In addition, ALTS's proposed relief would do little to further the Act's policy of safeguarding competition. Where incumbent LECs control potential bottlenecks, regulations require — and U S WEST has committed to provide — CLEC access to the facilities and

^{19/} CLEC investment incentives would be distorted as well. If a CLEC can avoid all research and development risks by waiting to exploit the incumbent LEC's innovative services and technologies, and if it can abandon those innovations at any time without cost or risk should they turn out to be less successful in the marketplace than anticipated, the CLEC itself is discouraged from experimenting, investing, and innovating.

^{20/} Remarks by William Kennard to USTA's Inside Washington Telecom (Apr. 27, 1998) at 5.

services of the incumbent on regulated terms. But as noted above, the facilities ALTS is seeking — DSLAMS, routers, and backbone transmission facilities — are readily available from sources other than incumbent LECs at competitive prices. Since CLECs can obtain substitute facilities in the marketplace, the incumbent LEC's facilities are not bottlenecks and pose no threat to competition. Regulatory mandates requiring incumbent LECs to share their facilities or networks therefore serve no economic purpose and needlessly distort investment incentives. As Chairman Kennard recently observed, in a market open to competitive entry, "new packet networks . . . could be free of retail regulation and exempt from unbundling and discounted resale requirements."^{21/}

Similarly, any advantage an incumbent LEC may have with respect to facilities that were deployed under the prior, noncompetitive regulatory regime simply does not apply to an incumbent LEC's newly deployed data facilities. Any competitive carrier can construct or acquire the electronics and other equipment needed for data services and connect them to existing local loops. Thus, any advanced data facility that an incumbent LEC may build and deploy now or in the future could just as easily be built and deployed by a CLEC. And what is true of individual facilities is equally true of the advanced networks they together comprise: A CLEC that can duplicate an incumbent LEC's individual facilities can also duplicate the incumbent LEC's entire advanced data network. There is no reason to penalize an incumbent LEC simply because it takes the initiative and begins to roll out advanced services before other carriers have decided whether to do so.

^{21/}

Id.

In short, competition in the data services market is in no way dependent on regulated access to incumbent LECs' advanced data facilities or networks. ALTS's requested relief offers no policy benefits capable of offsetting its substantial distortion of investment incentives.

III. THE SPECIFIC REGULATORY INTERVENTIONS THAT ALTS PROPOSES ARE UNNECESSARY BECAUSE U S WEST HAS STRUCTURED ITS DATA SERVICE OFFERINGS IN A WAY THAT ENABLES OTHER CARRIERS TO COMPETE.

ALTS's basic claim is that competition in the data communications market cannot come about unless incumbent LECs are required by governmental fiat to share their new data networks with their competitors, either on an unbundled basis at prices based on forward-looking cost, or on a resold basis with prices discounted from retail. As discussed above and in U S WEST's petition for regulatory relief, this notion is contrary to law, economics, and good policy. Moreover, the excessive unbundling and resale requirements that ALTS proposes are simply not needed to fulfill the procompetitive mandates of the 1996 Act. U S WEST's data services are offered in a manner which is fundamentally procompetitive and enables all competitors to take reasonable advantage of those U S WEST facilities for which current alternatives may be limited. In this section, U S WEST responds to ALTS's laundry list of allegations concerning the adequacy of the interconnection its members receive.

A. U S WEST's xDSL Services.

In its petition for regulatory relief, U S WEST demonstrated that applying Sections 251 and 271 to its xDSL services makes it impossible to bring those services to

hundreds of thousands of customers in the less urban areas of U S WEST's territory. As a grant of the ALTS petition would continue to deny these customers those services, it is appropriate to discuss in some detail how U S WEST offers its xDSL services.

First, while it is by no means the only available regulatory choice, U S WEST is offering the entirety of its xDSL (MegaBit) services as basic telecommunications services. The link between the subscriber and the xDSL equipment (MegaSubscriber service) is provided pursuant to intrastate tariffs, and the intraLATA link between the DSL equipment and the ISP (MegaCentral service) is provided pursuant to either intrastate or interstate tariffs as appropriate. Therefore, MegaBit services are subject to the Commission's Open Network Architecture rules, which means that U S WEST's Internet access services must connect to the U S WEST MegaBit services on the same terms and conditions as are available to competing ISPs. U S WEST has not sought to waive these requirements in its request for regulatory relief. Thus, ISPs have a full and fair opportunity to use U S WEST's xDSL services on a non-discriminatory basis.

Second, U S WEST will make available to CLECs, pursuant to Section 251(c), the unbundled conditioned loops necessary to deliver xDSL service to an end user. While loop alternatives are rapidly appearing and growing in a number of markets (with cable modems in particular showing enormous growth^{22/}), U S WEST's loops remain a primary source of connectivity to many end user customers, particularly residential customers. A loop must be

^{22/} Illustrating the great potential of these services, Microsoft and Compaq have just announced that they are investing \$ 425 million in Road Runner, which provides content and high-speed Internet backbone services to approximately 90,000 cable modem customers. "Computer Companies Buy Stake in Road Runner Cable Modem Service," Comm. Daily at 2 (June 16, 1998). The same article reports that Road Runner's cable modem service is potentially available to 27 million cable households. Id. at 3.

“conditioned” to be usable for xDSL services, meaning that bridge taps and load coils must be removed. To the extent reasonable and feasible (and this is a constraint on U S WEST’s provision of xDSL services as well), U S WEST will make conditioned loops available to CLECs for the provision of xDSL and/or local exchange services. With respect to these loops:

- A “conditioned loop” means just that — a loop without bridge taps or load coils. ALTS refers something which it calls a “DSL loop.” As far as we can determine, ALTS’s “DSL loop” is a loop which contains all of the electronics that a competitor can obtain and put in place as easily as U S WEST can. U S WEST does not offer a “DSL loop” as ALTS defines it as an unbundled network element for the reasons described above.
- A purchaser of a conditioned loop, just like the purchaser of any other kind of unbundled loop, must be a carrier and agree to undertake the carrier responsibilities attendant to control of the loop. This means that the purchaser of the unbundled loop will completely control the loop, and will be responsible for the customer’s voice traffic over that loop (if any) as well as its data services. U S WEST will, of course, enter into an interconnection agreement with such a carrier if the carrier decides to hand off the customer’s voice traffic for further delivery to U S WEST’s local exchange customers.
- Under current technology, loops created with Digital Line Carrier (“DLC”) or similar technology cannot be used to provide xDSL services. U S WEST is hopeful that this limitation on xDSL deployment can be overcome by the end of the year.

Third, U S WEST will make collocation space available for competitors to collocate transmission equipment, which includes xDSL electronics, in U S WEST central offices. Such collocation will include the ability to interconnect the unbundled conditioned loops with the carrier’s xDSL electronics to create an xDSL service. U S WEST’s user-friendly collocation policies are briefly described in Part III.B.

Fourth, U S WEST will enter into agreements with competitive data carriers to interconnect their respective data networks. Thus a competitive data service provider will not

need to create a complete network in order to provide its customers with the ability to reach the maximum number of potential customers. U S WEST will negotiate in good faith other reasonable terms to govern the interconnection of data networks.

B. U S WEST's Interconnection and Collocation Policies.

ALTS raises a number of demands concerning interconnection in general, suggesting that the Commission predetermine the outcome of interconnection negotiations in a number of areas. For the most part, ALTS's demands go well beyond any legitimate authority the Commission might have to interfere with ongoing interconnection negotiations and the statutory process for settling interconnection disputes, at least on the skimpy and anecdotal record ALTS has submitted. Despite the generally unmeritorious nature of ALTS's demands, U S WEST takes this opportunity to describe how some of these issues have been working themselves out in actual negotiations, just as Congress envisioned.

In its Petition, ALTS asks the Commission to decree that CLECs have "unbundled access" to advanced data facilities. (ALTS Pet. 14-15) This demand frames perhaps an entire regulatory approach to data communications. U S WEST will interconnect with competitive data services, and will offer as unbundled network elements the facilities necessary to permit competitive carriers to offer advanced data services, including unbundled conditioned loops and collocation space for xDSL equipment. Such unbundled loops include loops capable of carrying the various xDSL signals, and of interconnecting to a competitor's xDSL equipment in a U S WEST central office. To the extent that mid-loop regeneration capability can actually permit extension of xDSL service beyond the current 18,000-foot limitation on loop lengths, U S

WEST will offer such regeneration capability as a type of loop conditioning. However, U S WEST will not invest in advanced data capabilities for CLECs, nor (for the reasons described above) is it necessary for it to do so under the Act.

In addition, ALTS requests that the Commission set up a number of complex rules to limit and govern the negotiations for physical collocation space. (ALTS Pet. 18-22) U S WEST has been making significant progress in negotiating with CLECs in this area. Among the collocation matters which have been negotiated:

- U S WEST offers a SPOT collocation option, which permits CLECs to aggregate unbundled network elements at a single U S WEST frame in the central office. SPOT collocation includes a common frame and tie cables in 100-pair increments (called expanded interconnection channel terminations) which provide a demarcation point for the unbundled network elements. Thus the SPOT frame also serves as a point of interface for all unbundled networks ordered by the CLEC.
- U S WEST's SPOT collocation option is clearly distinct from the BellSouth virtual collocation option that ALTS criticizes in its petition. *Id.* at 20. It is U S WEST's understanding that BellSouth allows CLECs to place a "connection" frame in its central office. U S WEST will permit a CLEC to place a frame in their collocation space. In addition, U S WEST's SPOT collocation option offers CLECs a more cost-effective and efficient method of combining network elements because it allows multiple CLECs to share the SPOT frame and assorted infrastructure.
- Cageless physical collocation is a new concept that U S WEST is introducing in response to the demands of the marketplace through the negotiation process. U S WEST offers cageless physical collocation in increments of nine square feet, depending on walkway space requirements. U S WEST anticipates that cageless physical collocation will be more efficient and less costly for CLECs because it does not require a cage or one-hundred-square-foot allotments of collocation space.
- U S WEST permits CLECs to connect two collocation spaces via tie cables. This can be done either on the SPOT frame itself or with tie cables between adjacent CLEC cages.

- U S WEST does not offer caged physical collocation space in increments of less than one hundred square feet. Given the fact that each collocation cage requires construction and walkways around the cage, smaller increments are simply not efficient. However, U S WEST's cageless collocation options should make this issue moot.
- ALTS's demand that the Commission impose TELRIC pricing on collocation agreements (ALTS Pet. 21) cannot stand in the face of the Eighth Circuit's decision in Iowa Utilities Board v. FCC and the court's subsequent mandamus order enforcing its mandate.
- U S WEST is trying to develop standard rates for collocation so that neither U S WEST nor CLECs are required to prorate back construction costs.

Further, ALTS questions whether incumbent LECs are providing adequate access to operational support systems ("OSS"), alleging a number of incidents concerning the provision of OSS for traditional telephone services. (ALTS Pet. 22-23). ALTS ignores that there is a fundamental difference between systems supporting the existing circuit-switched voice network and systems developed for and dedicated to advanced data communications services. With respect to data services, OSS is part of network management, is built into the electronics that route the data, and has nothing to do with the underlying voice network. Thus, unthinking extension of the Commission's voice OSS rules to data services would be unwise.


ALTS raises numerous other suggestions which seem to have little to do with anything, much less anything to do with bringing data services to communities that are not currently being served. ALTS condemns the successful court challenges brought by a number of incumbents, id. at 32, and generically (and unhelpfully) urges the Commission not to interfere with specific state proceedings, id. at 38-45. ALTS also asks the Commission to solve a wide variety of perceived and real provisioning issues that have nothing to do with the provision of data services by either incumbent LECs or CLECs. See, e.g., id. at 13, 17, 22-26. These

allegations and requests are simply not germane to the subject of advanced services and should be ignored.

CONCLUSION

For these reasons, the Commission should not delay its resolution of U S WEST's request for regulatory relief and should deny the specific relief requested by ALTS.

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June 18, 1998

CERTIFICATE OF SERVICE

I, Jonathan Frankel, hereby certify that on this 18th day of June, 1998, a copy of the foregoing "Comments of U S WEST, Inc." was served by hand delivery to the following, except that those marked with an asterisk were served by U.S. First Class mail.

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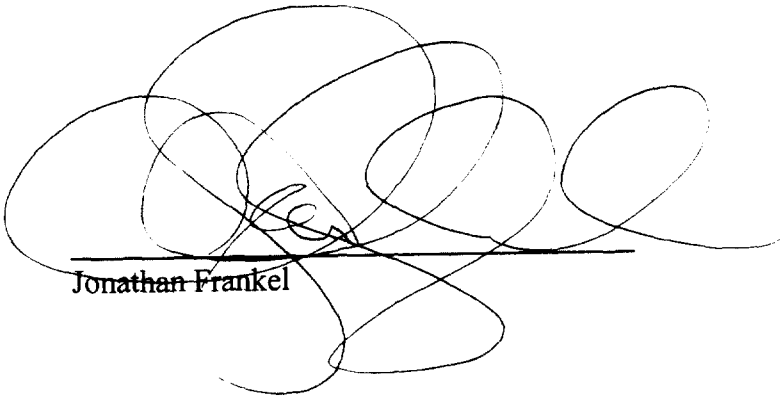
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